

Remarks/Arguments:

Claims 1, 3, 10 and 11 stand rejected under 35 U.S.C. §102(e) as anticipated by U.S. Patent No. 6,984,245 (McGahan et al.). Claims 13 and 22 stand rejected under 35 U.S.C. §103 as being obvious based on McGahan et al. in view of U.S. Published Application No. US2003/0069640 (Ferreira et al.). Applicants respectfully traverse these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. §2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. §2143.

Independent claim 1 recites a spinal bone implant, comprising: "a first insertion pin hole on a first flat sidewall portion; and a second insertion pin hole on a second flat sidewall portion at an angle of about 30 degrees to said first insertion pin hole, wherein a first inside pin surface of said first insertion pin hole and a second inside pin surface of said second insertion pin are smooth, non-threaded surfaces." The Office Action acknowledges the inside surface of the holes in McGahan et al. comprise a threadform. McGahan et al. explains that "[i]mplant inserter 80 is interconnected with implant 10 by threaded engagement of externally threaded portion 90 of inner shaft 85 with the internally threaded opening 40 of implant 10." (col. 6, Ins. 19-20). McGahan et al. does not teach or suggest first and second insertion pin holes each of which includes a smooth, non-threaded inside surface. To the contrary, McGahan et al. teaches away from the claimed invention.

The cited references, alone or in any reasonable combination, fail to teach or suggest each limitation of the claimed invention. It is respectfully submitted that independent claim 1 is in condition for allowance. Claims 10 and 11 each depend from claim 1 and are therefore

allowable for at least the reasons set forth above. Similarly, withdrawn claims 2, 4-9 and 12 should be allowed as being dependent on allowable generic claim 1.

Independent claim 13 recites a "spinal implant, comprising: a bone implant body including a superior end face; an inferior end face; an outer sidewall extending between said superior end face and said inferior end face, said outer sidewall including at least two flat sidewall portions; and concentric cuts on said superior end face and said inferior end face, said outer sidewall maintaining a natural shape of bone between opposed edges of the first and second flat sidewall portions."

McGahan et al. references Figure 4 thereof and explains at column 4, lines 36-38, that "outline 36 represents a typical outline of an allograft ring suitable for use to form an implant according to the present invention." McGahan et al. further explains at column 5, lines 13-15 that "the multi-faceted implant provides three pairs of substantially parallel side walls." It is clear from Figure 4 that walls 20, 24, 26, 28 and 30, which extend between the opposed edges of flat portions 18 and 22 are machined to be flat surfaces well within the outline 36 of the allograft ring. McGahan et al. teaches away from an implant in which the outer sidewall maintains a natural shape of bone between opposed edges of the first and second flat sidewall portions.

The cited references, alone or in any reasonable combination, fail to teach or suggest each limitation of the claimed invention. It is respectfully submitted that independent claim 13 is in condition for allowance. Withdrawn claims 14-21 and 23 should be allowed as being dependent on allowable generic claim 13.

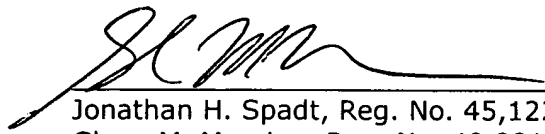
It is respectfully submitted that each of the pending claims is in condition for allowance. Early reconsideration and allowance of each of the pending claims are respectfully requested.

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If the Examiner believes an interview, either personal or telephonic, will advance the prosecution of this matter, the Examiner is invited to contact the undersigned to arrange the same.

Respectfully submitted,


Jonathan H. Spadt, Reg. No. 45,122
Glenn M. Massina, Reg. No. 40,081
Attorneys for Applicants

JHS/GMM/ap

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<input checked="" type="checkbox"/> P.O. Box 980 Valley Forge, PA 19482 (610) 407-0700
<input type="checkbox"/> P.O. Box 1596 Wilmington, DE 19899 (302) 778-2500

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